

is wreaking havoc with the country. For the first time in 230 years, they rule the President cannot make a recess appointment. So, yes, there is a crisis, and we need to do something about it. One way to resolve part of it is to get this good man on the court now.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Mr. President, I gather, listening to the majority leader, the whole purpose is to stack the court. So the real issue, I guess, is he disagrees with the rulings on the DC Circuit.

Look, we have been voting to confirm judges we know we will not prefer the outcome of their decisions. But it sounds to me like the majority leader has finally kind of fessed up to what the real problem is. The reason it needs to be done this week versus next week is because he does not like what the DC Circuit is doing. So it does not have anything to do with caseload or anything else. In fact, what is unprecedented is confirming a DC Circuit court judge 2 days after he has been on the calendar—2 days. Goodness. What is the difference between now and next week? I find it impossible to understand.

In fact, I do not understand why we are having this whole discussion this morning. We have plenty of things to debate around here and plenty of things we disagree upon. We have had an orderly process. This Congress has done well: 19 judges compared to 4 for President Bush at this point.

If there is still a consent request pending, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. MCCONNELL. I think the majority leader and I ought to sit down like we normally do and figure this out and eliminate a manufactured crisis and go forward.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, in school we studied a lot of things. But one of the things I cannot forget is George Orwell's "1984." It was an interesting book because in that book he talked about people coming to a time when whatever they said was factually just the opposite.

Here is where we are now. It has been legislatively determined the DC Circuit should have 11 members. My friend says we are stacking the court? There are four vacancies. Stacking the court by having eight there instead of seven? That math is not very good.

My friend also keeps talking about that the DC Circuit does not have anything to do. The DC Circuit is now more than one-third vacant with four judicial vacancies. Mr. Srinivasan is nominated to the eighth seat on the DC Circuit. Three still remain empty.

And, yes, we are. The country is concerned about the decisions coming out of that court. The DC Circuit Court of Appeals is considered by some the most

important court in the land. But by virtually everybody, it is "the second most important court in the land" because of the complex nature of the cases they handle. The court reviews complicated decisions and rulemaking of many Federal agencies and in recent years has handled some of the most important terrorism and enemy combatant and detention cases since the attacks of September 11. These cases are very complex in nature, requiring additional time for consideration.

Congress took action to address these concerns about their caseload by decreasing the number of judgeships in 2008 from 12 to 11. Congress has set the number of judgeships needed by the court at 11. The court should not be understaffed by one-third.

In reality, according to the Administrative Office of U.S. Courts, the caseload per active judge has increased by 50 percent since 2005, when the Senate confirmed President Bush's nominee to fill the 11th seat on the DC Circuit.

So Senate Republicans willingly confirmed President Bush's nominees to the 9th, 10th, and 11th seats on the DC Circuit. We did not think they were stacking it. I did not particularly like some of the people they put on there, but it was not stacking it. That is what the legislation called for.

This good man is President Obama's second nominee to the DC Circuit to fill the eighth seat, and they filibustered Halligan twice.

So this is a situation that needs to be resolved quickly. We cannot have the second, or first, most important court in the land one-third vacant. We are stacking the court with one person? I think not.

So we can stay here longer, but I have made my point. One thing I have to say to my friend, although we have gotten into a few of these little conversations before on the Senate floor, I will wind up getting the last word.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Yes, I know the majority leader will always have the last word. That is the advantage of being in the majority and not the minority. I think it has been actually a good discussion this morning. I think we have demonstrated there is no real problem. We have confirmed the President's nominees both for the judiciary and for the executive branch in a very timely fashion, and we will continue to process these judges in consultation with the majority leader as they come along.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, the only thing I would say is, what about the judge from Wyoming? Why don't we do that today? Could there be a more Republican State in the country than Wyoming? Maybe. I do not know. Maybe Idaho is vying for No. 1. But I am willing to approve this judge today. Why don't we vote on him today?

Well, if you want to go ahead and have us invoke cloture on this other

guy, we will do that, but I am willing to vote on the Wyoming guy today.

Mr. MCCONNELL. Since the majority leader always reminds me he has the last word, I am hesitant to speak again. But we will continue to process these judges in an orderly fashion, as we have all year long, and, hopefully, he and I can discuss this further off the floor and find a way forward.

Mr. REID. I do not want anyone thinking I am not keeping my word. I was not going to say anything, but I thought I said I would get the last word.

So Senator MCCONNELL can say something now, and I will not get the last word.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the Republicans controlling the first half.

The Senator from Arkansas.

#### IRS SCANDAL

Mr. BOOZMAN. Mr. President, I am very much appreciative of the Senator from Kentucky and the Senator from Nevada having this very important discussion.

Washington tends to operate inside a bubble where one can easily forget just how much Main Street America is hurting economically, how many Americans feel their rights are being threatened, and how many fear we are not going to leave behind a better country for our children.

That is why it is so important we stay connected to our constituents. It is why I travel home almost every weekend, hold telephone and online townhalls from my Washington office, and try to read my mail, which is so very important.

In a recent townhall I answered some difficult questions on the issues we are facing as a nation. However, one of the toughest questions that was posed was not about a specific policy issue. Instead, it was when I was asked: How do we fix the mess in Washington?

I answered, in part, that transparency and accountability would go a long way to restoring faith in Washington. That was before the Benghazi controversy escalated. Then news of the IRS scandal broke. Almost immediately after that we learned the Department of Justice had obtained the private phone records of dozens of Associated Press reporters.

This is the opposite of what we need to do to fix the problems in Washington. These scandals move us in the wrong direction.

It is hard to pick which one of these I find the most troubling, but I want to focus on the IRS scandal because targeting political groups, singling them out for additional scrutiny simply because you disagree with their ideological views is wrong on every level.

Dismissing this massive overreach as if it is just the acts of a few rogue agents in Cincinnati, as some have tried to do since the onset, is not taking leadership nor is it seeking to hold the agency accountable.

We now know the Acting IRS Commissioner knew of these abuses for at least a year, and officials at Treasury and as high up as the Chief of Staff at the White House were briefed before the leak despite the repeated claims that the administration learned about it through news reports.

We know it was not just Cincinnati. IRS officials at the agency's Washington headquarters also sent queries to conservative groups asking about their donors, and progressive groups, who operated the same way, were not subjected to this type of harassment.

On top of all this there is real concern that IRS officials may have lied to Congress in an effort to cover up the agency's misdeeds. Yesterday before the Finance Committee the former head of the agency who was in charge at the time of these abuses claimed this was not "politically motivated," while at the same time he said he did not know how the targeting happened.

Along with this impressive double-talk, he refused to apologize for the abuses that went on under his watch.

Somebody has to be accountable. This is not a time for excuses; it is a time for leadership. The President needs to fully cooperate with the congressional investigations into the IRS scandal.

Last week, our entire caucus sent a letter to the White House that demands at least this much from the administration. Washington's credibility—what is left of it—is on the line. The American people deserve to know what actions will be taken to ensure those who made these decisions at the IRS will be held accountable.

The good news is people on both sides of the aisle—Republicans and Democrats—are rightfully outraged. We are going to get to the bottom of this. People will be held accountable. At the very least those engaging in these unethical actions need to be fired. If they broke the law, they need to be prosecuted.

This scandal gives the already maligned IRS a black eye. It reinforces people's worst fears about Washington—that those in power will use any means necessary to maintain that power.

Keep in mind this agency will be responsible for implementing and enforcing key provisions of the President's health care law, a law that a majority of Arkansans do not support. If these types of abuses are allowed to go unchecked, what kind of bullying will go

on when that implementation begins, especially in light of the fact that the official who was in charge of the unit that targeted conservative groups now runs the IRS office responsible for the health care law?

Everyone needs to be treated fairly under the law. Clearly, there are employees at the IRS who do not subscribe to this principle. There must be zero tolerance for the actions of those individuals.

Until we change the culture in Washington, we will not gain the confidence of the American people. The onus is on us. Washington as a whole—the White House, Congress, and every civil servant—has to remember whom we work for and to whom we are accountable. The actions of the IRS, along with the other scandals plaguing DC, only move us further from the goalpost, not closer.

I yield back.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator from Nebraska.

#### ONGOING CONTROVERSIES

Mrs. FISCHER. Madam President, I rise today to discuss a number of ongoing controversies of national importance, including the IRS's unfair treatment of conservative groups applying for tax-exempt status, the secret gathering of journalists' phone records by the Department of Justice, and the administration's response to the attack on the U.S. consulate in Benghazi.

Both the House and the Senate have held hearings with the former and acting IRS Commissioners, as well as the Treasury Department's Inspector General for Tax Administration, who conducted an internal audit and authored the report revealing the pattern of government abuse within the IRS tax exempt division.

While I am pleased that Congress is judiciously exercising its oversight powers, very few questions have been answered. The pattern of inconsistent explanations continues. We still do not know who exactly initiated the practice of wrongfully targeting conservative groups.

Ironically, the Acting IRS Commissioner, Steven Miller, testified under oath that there was absolutely no political motivation behind the practice; however, Mr. Miller could not identify the names of the individuals whose motives he was supposedly vouching for. How is that even possible? Nebraskans know better than to buy that bill of goods.

We still do not know why this abusive policy was implemented in the first place. IRS officials have maintained that the extra scrutiny given to conservative groups was an attempt to deal with an influx of applications. As a number of fact checkers and media outlets have noted, that surge in applications did not happen until well after the targeting began. The reasoning for the practice put forth by the IRS simply does not align with the facts.

We still do not know why the IRS believed it had the right to release confidential data which it had wrongly requested in the first place. They released that to third parties with adversarial interests to those conservative groups in question. The progressive publication ProPublica admitted it obtained from the Internal Revenue Service illegally leaked confidential tax forms from nine organizations.

All of the groups whose records were improperly released were conservative. Why did the IRS leak these records? What was their goal? Why did only conservative organizations have their confidential information leaked? Why did the White House senior staff, including the White House Counsel and the White House Chief of Staff, fail to inform the President of this egregious government overreach by the IRS?

Former Special Counsel to President Clinton, Lanny Davis, recently wrote an opinion piece in the Hill:

With all due respect to someone who has impeccable legal credentials, if she did have such foreknowledge and didn't inform the President immediately, I respectfully suggest Ms. Ruemmler is in the wrong job and that she should resign.

Politico recently reported—the story keeps changing:

The White House explanation of what it knew about the IRS story ahead of the first press reports on the controversy shifted once again Thursday.

Let me repeat that, "shifted once again."

It seems that some folks from the White House cannot get their facts straight. Why? The White House Press Secretary admitted yesterday that officials in the White House discussed how and when the IRS would tell the public the agency had been targeting conservative groups. The eventual public disclosure was made by IRS Tax Exempt and Government Entities Division Director Lois Lerner, who revealed the pattern of government abuse with an intentionally planted question at an otherwise little-noticed Washington, DC, lawyers conference.

It is outrageous that despite numerous congressional inquiries asking the IRS for answers in both public hearings and formal letters, the IRS would first reveal the truth through a charade of a "planted" question. Then Lerner went on to earn herself a "bushel of Pinocchios" from the Washington Post fact checker for her series of misstatements and "weasley wording."

Whatever happened to the President's worthy goals of promoting the most accountable, the most transparent, the most open administration in history? I do not appreciate being misled, and Nebraskans do not either.

Regarding the secret collection of the Department of Justice of over 100 Associated Press journalist phone records, two key questions remain. Why didn't the Department of Justice ask the Associated Press to voluntarily cooperate before issuing those subpoenas as the law requires? And why did the Department of Justice fail to abide by the law